



## OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable A. T. Pribble  
County Attorney  
Mills County  
Goldthwaite, Texas

Dear Sir:

Opinion Number 8-5243  
Re: Detachment of territory  
from county line school  
district.

We have received your letter of recent date from which  
we quote the following:

"Will you please give me an early ruling on  
this matter? Prairie Common School District No.  
42 in Mills County, Texas has an area of 24.7  
square miles. This district lies in three coun-  
ties: Mills, Comanche, and Brown. Approximately  
two thirds of this district is in Mills County.  
Mills County has jurisdiction over the Prairie  
school.

"Prairie is a consolidated County-line school  
district. It has a board of trustees of seven  
members. Two consolidations have taken place. On  
August 24, 1917 Fisher district and Prairie Dis-  
trict were consolidated, and on June 7, 1924 Demo-  
crat district and Prairie district were consoli-  
dated, forming the present district.

"The valuation of the district at the present  
time is \$167,595.00. The scholastic population for  
1943-44 is 67 scholastics. The tax rate is \$1.00.

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There is no bonded indebtedness against the district. The district maintains an accredited rural elementary school. This District maintains its own school bus for transporting pupils who live more than 2½ miles from the Prairie school to that school. High school pupils are transported by bus to neighboring high schools.

"No elections to raise or lower the tax rate, to authorize bonds, or to make any move involving consolidation have been held for several years.

"Please answer these questions:

"1. Does the Mills County Board of County Trustees (with the approval of the County Boards of Comanche and Brown Counties) have the legal right to detach a part of the territory now belonging to the Prairie district and to annex this same part to Priddy Common Consolidated school district #14, Mills County (The Priddy district is an accredited 4 year high school, and the part of Prairie district which would be involved is adjacent to and joins Priddy district) and to detach the remainder of the Prairie district and annex it to the Zephyr Independent district of Brown County which has a four year affiliated high school and is adjacent to and joins the Prairie district?

"2. What, in the nature of a petition, would be necessary before the several County Boards of Education may consider the proposed consolidation?

"3. What jurisdiction, if any, does the board of trustees of the Prairie district have in the proposed consolidation?"

Your questions involve a construction of Section 2 of Article 2742e and Section 1 of Article 2742f, Vernon's Annotated Civil Statutes, which provide respectively as follows:

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"Sec. 2. That on and after the passage of this Act the County Board of School Trustees in any county in this State shall have authority and full power to create Common School Districts, to subdivide districts, and to change boundary lines of any or all Common School Districts legally coming under the jurisdiction of the County Board of School Trustees subject to the supervision of the District Court having jurisdiction over the county where the County Board is appointed or elected; provided that before any changes may be made in boundary lines of school districts the trustees of the Common School Districts affected shall be notified to appear before the County Board for a hearing, and after said hearing, or the date set for said hearing, the County Board of Trustees may pass such order or orders as will carry out the provisions of this Act; provided, further, that the trustees of the districts affected may appeal from the decision of the County Board to the District Court. Acts 1929, 41st Leg., 1st C.S., p. 259, ch. 109."

"Sec. 1. In each county of this State the County Board of Trustees shall have the authority, when duly petitioned as herein provided, to detach from and annex to any school district territory contiguous to the common boundary line of the two districts; provided the Board of Trustees of the district to which the annexation is to be made approves, by majority vote, the proposed transfer of territory and provided, further, that where the territory to be detached exceeds ten per cent (10%) of the entire district the petition must be signed by a majority of the trustees of said district in addition to a majority of the qualified voters of the territory to be detached. The petition shall give the metes and bounds of the territory to be detached from the one and added to the other district and must be signed by a majority of the qualified voters residing in the said territory so detached. Upon receipt of the said petition, duly signed, and upon notice of the approval of the proposed annexation

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by the Board of Trustees of the district to which the territory is to be added, the County Board of Trustees shall pass an order transferring the said territory and redefining the boundaries of the districts affected by said transfer, the said order to be recorded in the Minutes of the County Board of Trustees. Provided that no school district shall be reduced to an area of less than nine square miles."

These two Acts were passed by the Legislature at the same session, and it has been held by our Supreme Court that where common school districts are concerned, such provisions must be construed together. See County School Trustees of Orange County et al. v. District Trustees of Prairie View Common School District No. 8, 155 S. W. (2d) 434; Board of School Trustees of Young County v. Bullock Common School District No. 12, 55 S. W. (2d) 538.

The case of County School Trustees of Runnels County et al. v. State et al., 95 S. W. (2d) 1001, involved the question of the authority of the County School Board of Runnels County to detach from a consolidated county line independent school district, lying in Runnels and Coleman Counties, certain territory lying in Runnels County and attach the same to a common school district situated wholly within Runnels County. The court held that this could not be done without the consent of the Coleman County school board. We quote the following excerpts from the opinion of the court:

"It is fundamental that the county trustees of one county cannot alone create a district composed of territory lying in two counties; and as a practical matter it would follow that where a county line consolidated independent school district has been created by the joint action of both counties, it necessarily follows that that district cannot be abolished or changed except by the consent of the county school trustees of each county having territory contained therein.

\* \* \*

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" \* \* \*; and we are clear in the view that article 2742f does not permit the county trustees of one county to detach any portion of the territory of a county line school district and attach the same to another district, without the consent and concurrent action of the trustees of each county having territory in the county line district. To permit such would cause interminable confusion and would permit one party to the consolidation agreement to destroy that agreement, or seriously affect it without the concurrence or consent of the other party to such agreement."

" \* \* \* manifestly the county school trustees of one county cannot change the boundaries of such county line district without the consent of the school trustees of the other county involved."

The situation under consideration is more complicated than the Runnels County case for, here, three counties are involved instead of two, and it is sought to divide the county line district into two parts and attach one part to a school district situated wholly within one county and attach the second part to another school district lying wholly within another county. Be that as it may, the principle announced in the Runnels County case is clearly applicable; namely, before a county line school district may be altered or changed, the action of the county board of each of the counties in which the county line district lies is required.

It is manifest that the jurisdiction of a county board of one county does not extend to or include a school district lying wholly within another county. Therefore, each of the three counties would have to concur in the action proposed in your letter. Each county board would have to consent to the alteration of the county line common district. Moreover, the Mills County Board would be the proper agency to attach the

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territory to the Priddy district which lies wholly within Mills County. However, to make such change effective, the Comanche and Brown Counties Boards would have to consent to the same. The Brown County Board would be the proper agency to attach territory to the Zephyr district which lies wholly within Brown County, but the county boards of the other two counties would have to concur.

You are, therefore, advised that under Section 2 of Article 2742e and Section 1 of Article 2742f the following steps must be taken before the transfer of territory as outlined in your letter may be legally effected:

1. The board of trustees of each of the school districts to which the transfer is to be made (Priddy and Zephyr) must by a majority vote approve the transfer.

2. A petition requesting the transfer shall be addressed to the Mills County Board giving the metes and bounds of the territory to be detached from the Prairie district and attached to the Priddy district. The petition must be signed by a majority of the qualified voters residing in the territory to be detached and also, if such territory exceeds 10% of the entire Prairie district (which we assume from your letter to be the case), by a majority of the trustees of the Prairie district.

3. A similar petition must be addressed to the Brown County Board giving the metes and bounds of the territory to be detached from the Prairie district and attached to the Zephyr district. It must be signed as outlined in the preceding paragraph.

4. Under Section 2 of Article 2742e, before any change may be made in the boundary lines of a common school district, the trustees of the common school districts should be notified to appear before the county board for a hearing. As the concurrence of the county board of each county in which a county line district is situated is necessary to effect a change in the boundary lines, it is our opinion that the county boards of Mills, Brown and Comanche Counties, respectively, must

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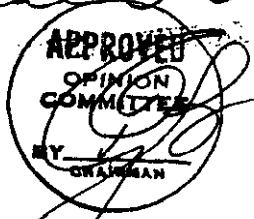
notify the trustees of the Prairie district to appear before each of said boards for a hearing, "and after said hearing, or the date set for said hearing, the County Board of Trustees may pass such order or orders as will carry out the provisions of this Act; provided, further, that the trustees of the districts affected may appeal from the decision of the County Board to the District Court." In other words, after the hearing before each county board, or the date set for the hearing, each of said boards if it determines that such action is reasonable may order the transfer and consent to the same.

It may be contended that the part of Section 1 of Article 2742f which reads that "Provided that no school district shall be reduced to an area of less than nine square miles" would prohibit the transfer under consideration. We do not think that this is true, for two reasons: (1) No district is reduced to an area of less than nine square miles because the Prairie district as such will exist no more, and both the Zephyr and the Priddy districts will each be in excess of nine square miles; (2) Article 2742e contains no such limitation. Article 2742f applies to all school districts whereas Article 2742e applies only to common school districts. Therefore, where common school districts are concerned and there is a conflict between the terms of Article 2742e and Article 2742f, the provisions of Article 2742e would prevail. However, we think in this instance, as we have mentioned in #1), that there is no conflict.

Although we have not answered your questions in the order in which they were asked, we trust that they are sufficiently answered in the enumerated paragraphs.

APPROVED MAY 4, 1943

*Gerald C. Mann*



OWS-s

O.R.  
C.C.R.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *George W. Sparks*  
George W. Sparks  
Assistant